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MAR 28 1983
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NO. 82-6306

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

CHASTINE LEE RAINES,

Petitioner

v.

STATE OF ALABAMA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI

TO THE ALABAMA SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does the Constitution prohibit imposing a sentence of death on a non-triggerman accomplice to an intentional killing who was prepared to kill, intended to kill, and supported the killing.

2. Should this Court review whether the Alabama Supreme Court properly decided the state law issue of whether the victim of the killing in this case was also a robbery victim within the meaning of the applicable Alabama statute?

3. Should this Court use this case, which did not even involve non-disclosure of exculpatory evidence, to reconsider its decision in United States v. Agurs, 427 U.S. 97 (1976), concerning when non-disclosure of exculpatory evidence requires a new trial?

PARTIES

The caption contains the names of all the parties in the court below.

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TABLE OF AUTHORITIES

OPINIONS BELOW

1. The opinion of the Alabama Court of Criminal Appeals affirming petitioner's conviction and death sentence, Chastine Lee Raines v. State, No. 6 Div. 688 (Ala. Cr. App. April 20, 1982), is not yet published. A copy of the manuscript opinion was submitted as Appendix B to the petition.

2. The opinion of the Alabama Supreme Court affirming the Court of Criminal Appeals decision, Chastine Lee Raines v. State, No. 81-746 (Ala. Dec. 30, 1982), is not yet published. A copy of the manuscript opinion was submitted as Appendix A to the petition.

JURISDICTION

The decision of the Alabama Supreme Court from which petitioner seeks relief was entered on December 30, 1982, and thereafter stayed for sixty days to permit filing of the petition. The petition was timely filed on February 25, 1983.

This Court has jurisdiction pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The petition addresses issues involving the Eighth and Fourteenth Amendments to the United States Constitution as well as Code of Alabama 1975, §13A-5-31(a)(2).

STATEMENT OF THE CASE

The facts of the crime, as found by the Court of Criminal Appeals, are as follows:

> Appellant [the petitioner here] and Darryl Travis Watkins entered Eugster's Meat Market in the Powderly area of Birmingham around 10:30 A. M. on November 26, 1980. Both appellant and Watkins were armed with pistols. Mr. L. E. Owens (the owner of the market), his wife, a security guard, three or four butchers and two customers were in the store at that time. As appellant and Watkins came in the front door appellant walked toward the meat counter, knocked the security guard to the floor by striking him with his pistol, took the security guard's pistol away from him and told him to "lay down or I'll kill you." At the same time Watkins pushed Mrs. Owens and jumped up on a counter between the cashier's cage and the meat counter. Watkins ordered everyone to "get down" and to "move it."
>
> Seventy-nine year-old Milton Mayfield, the deceased, was operating a slicing machine located twenty-two feet from the cashier's cage directly in Watkins' line of fire. The deceased's vision was poor and he also had a hearing impairment. When Watkins ordered everyone to "get down" the deceased either could not comprehend Watkins' commands or for some other reason failed to respond. Watkins' then took direct aim and shot the deceased between the eyes. Watkins next held his gun to Mrs. Owens' head and ordered Mr. Owens, who was standing inside the cashier's cage, "to give him all the money." Mr. Owens placed approximately $2,400. in the yellow bag he was handed by Watkins. Appellant and Watkins then fled from the scene by running out the front door.

Chastine Lee Raines v. State, No. 6 Div. 688 (Ala. Cr. App. April 20, 1982), Ms. op. at 2.

On April 10, 1981, petitioner was indicted by the Jefferson County Grand Jury for the Code of Alabama 1975, §13A-5-31(a)(2) capital offense of "robbery or attempts thereof when the victim is intentionally killed by the defendant." (R. 781-782) The trial began on June 29, 1981, and on July 1, 1981, the jury returned a verdict convicting petitioner of the capital offense. (R. 810)

Following a separate sentence hearing, the jury fixed petitioner's sentence at death (R. 647-721, 810), and the trial court on July 6, 1981 upheld that sentence (R. 811-815).

On April 20, 1982, the Alabama Court of Criminal Appeals affirmed petitioner's conviction and death sentence, Chastine Lee Raines v. State, No. 6 Div. 688, and on Dec. 30, 1982, the Alabama Supreme Court affirmed that decision, Chastine Lee Raines v. State, No. 81-746.

SUMMARY OF ARGUMENT

This case involves a non-triggerman defendant convicted of the Alabama capital offense of robbery-intentional killing. All Alabama capital offenses include intent to kill as an element, and under Alabama law which was applied to this case a non-triggerman may be convicted of the capital offense if, but only if, he has a particularized intent to kill and is an accomplice to the intentional killing itself instead of simply to the underlying non-homicide felony. In reviewing a capital case involving a non-triggerman defendant the Alabama appellate courts apply a two-fold test: whether the jury was properly instructed on the intent to kill requirement; and whether there was sufficient evidence from which the jury could find beyond a reasonable doubt that the non-triggerman defendant possessed the necessary intent to kill. Only after applying that two-fold test did the Alabama Supreme Court hold that petitioner was properly convicted and sentence to death.

The only issue presented by this case relevant to petitioner's non-tiggerman status is whether the Constitution forbids imposing a sentence of death on a non-triggerman who was an accomplice to the intentional killing itself, who possessed intent to kill, and who supported the killing. That is not a substantial federal issue.

The Alabama statute specifying the capital offense of robbery-intentional killing requires that the person killed be a victim of the robbery. The Alabama Supreme Court held that Milton Mayfield, the person killed in this case, was a robbery victim within the meaning of the Alabama statute. That holding is a state law matter which is not within the province of this Court.

Contrary to the suggestion in the petition, this case is not a good vehicle for this Court to use to reconsider its holding in United States v. Agurs, 427 U.S. 97 (1976), concerning when non-disclosure of exculpatory evidence requires a new trial. This case did not even involve non-disclosure, but only delayed disclosure of certain lineup information useful to the defense. The Alabama Supreme Court found that petitioner was not harmed at all by discovery of that evidence at trial instead of earlier, because he could not have used the evidence any more effectively had it been disclosed earlier.

ARGUMENT

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

The petition for a writ of certiorari should be denied because the only federal issues presented are insubstantial ones.

I. THE ONLY NON-TRIGGERMAN ISSUE PRESENTED IS AN INSUBSTANTIAL ONE

Contrary to the assertions in the petition, this is not a case in which a defendant sentenced to death lacked intent to kill as required in Enmund v. Florida, 102 S. Ct. 3368 (1982). The Alabama capital offense statute under which petitioner was convicted requires intent to kill. Code of

Alabama 1975, §13A-5-39(a)(2) and (b); Beck v. State, 396 So. 2d 645, 662 (Ala. 1980) ("Each of the fourteen crimes specified requires an intentional killing with aggravation...") (emphasis added). Under that statute, as interpreted by the Alabama Supreme Court, a non-triggerman may be convicted of a capital offense and sentenced to death in Alabama if, but only if, the State proves beyond a reasonable doubt that the non-triggerman possessed the requisite intent to kill and knowingly aided and abetted the intentional killing itself. Chastine Lee Raines v. State, No. 81-746 (Ala. Dec. 30, 1982), Ms. op. at 2-4; Ritter v. State, 375 So. 2d 270, 273-275 (Ala. 1979), vacated and remanded on unrelated grounds, 448 U.S. 903 (1980).

The Alabama Supreme Court announced and applied in this case a two-part test for ensuring that the Enmund v. Florida, 102 S. Ct. 3368 (1982), and Alabama law requirement of intent to kill is observed in non-triggerman cases such as the present one:

> To affirm a finding of a "particularized intent to kill," the jury must be properly charged on the intent to kill issue, and there must be sufficient evidence from which a rational jury could conclude that the defendant possessed the intent to kill. The Court of Criminal Appeals found in the affirmative on both parts of this two-part test; and, upon careful review of the record, we discern no basis for disturbing that finding.

Chastine Lee Raines v. State, supra, Ms. op. at 4. That test was properly applied in this case.

In his oral charge at the guilt stage, the trial judge told the jury that petitioner was charged with the capital offense of "while committing a robbery or attempting to commit a robbery intentionally killing the victim thereof." (R. 611, 619) The judge stressed that in order to constitute a capital offense the killing of the robbery victim must have been intentional rather than negligent or reckless, and he defined what intentional means. (R. 623)

The judge took note of the fact that the evidence indicated that more than one person was involved in the crime, and he explained the general law of aiding and abetting to the jury. (R. 619-621) He then focused specifically on the aiding and abetting doctrine as it related to the intent to kill requirement applied to a non-triggerman:

> This Defendant is the one on trial. Now you look to the evidence to determine if this Defendant is guilty, if you come to the conclusion beyond a reasonable doubt that the capital offense did take place, that is a robbery took place and that Milton Mayfield was intentionally killed by someone, then you come to the evidence to determine if this Defendant is guilty of the capital offense as charged in the indictment.
>
> The evidence in this case presented by the State indicated that someone other than the Defendant fired the one shot which killed Mr. Mayfield. Now we come back to the aiding and abetting conspiracy. In order to find this Defendant guilty of the capital offense as charged in this indictment, you must believe beyond a reasonable doubt that while he was committing a robbery or aiding and assisting another to commit a robbery that he also either by prearrangement, that is prearrangement or on the spur of the moment, helped, assisted by words, acts or deeds or was ready, willing and able to assist in seeing that Milton Mayfield was also intentionally killed. In other words, just the contemplation of the robbery would not be enough. He would also have to be implicated by affirmative action, words, assistance, deeds, in the intentional killing of Mr. Mayfield. You must look to all of the surrounding facts and circumstances. These are mental elements. These are things that are in people's minds and very rarely, certainly we have no way of projecting thoughts in people's minds. So you look to all the surrounding facts and circumstances in this case. All of them. Use your common sense and draw upon those inferences to determine if this Defendant aided and abetted or participated in a robbery, as I have defined that crime robbery to you, and also aided, assisted, helped, was ready, willing and able to help if it became necessary in the intentional, intentional killing of Milton Mayfield and that that is the man in the store.

> If you are convinced beyond a reasonable doubt of those things, all of those things, that is that the robbery took place and that this Defendant was guilty of the robbery and that Mr. Mayfield was intentionally killed and also this Defendant helped, aided, assisted or conspired by prearrangement or on the spur of the moment to help in seeing him intentionally killed, if you believe all of those things and that he is the man, if you believe all of those things beyond a reasonable doubt, then it would be your duty to find the Defendant guilty of the capital offense as charged in the indictment.

(R. 624-626) (emphasis added)

Then, the judge charged the jury on the lesser included non-capital offense of murder of the felony murder type. (R. 626-629) See, Code of Alabama 1975, §13A-6-2(a)(3). He explained the felony murder doctrine, and explained that that doctrine could not be used to supply the intent to kill required for the capital offense:

> The lesser included offense of murder and this is where it kind of gets complicated. You have something that is called the felony murder doctrine. That is where someone while committing the offense of robbery someone is killed. It might could have been foreseen or should have been foreseen that someone would die, then that person is guilty of murder. What distinguishes that from the capital offense? The capital offense indicates that it must be intentional killing and that the Defendant aided and assisted and helped specifically in that intentional killing. Now if you believe beyond a reasonable doubt that this Defendant was guilty of participating in or committing the offense of robbery, but that he had nothing whatsoever to do with the killing of Mr. Mayfield, that is that was the act of another without any help of his; there was no plan or scheme or thought, he was not ready, in other words, this Defendant did not contemplate anyone being killed and did not assist in anyone being killed, did not help in anyone being killed either by prearrangement or on the spur of the moment, then he cannot be found guilty of the capital offense. But, if you believe that he was the one in the store and was participating in the robbery, the same elements I said before, but did not actually help in the intentional killing of Mr. Mayfield,

then you could not find him guilty of the capital offense as charged in the indictment but it would be your duty to find him guilty of murder as charged in the indictment. Because, you see, in order for it to be murder someone must be intentionally killed. In order for it to be murder the person must be intentionally killed. The law says that while you are engaged in a robbery, a rape, that is not involved in this case, but a robbery, and someone is killed, that supplies the intent. The law says that intent is supplied by the mere fact that someone is committing a robbery and someone dies. But that does not make it the capital offense. In order for it to rise to the capital offense, while in that robbery the victim must be intentionally killed, not supplied by the felony murder doctrine as I have just said, not supplied by the mere fact that someone is engaged in a robbery; but intention to kill.

. . .

So, if you believe beyond a reasonable doubt that this Defendant, Chastaine Raines, was engaged in the crime of robbery, either himself or aiding and assisting another to commit the crime of robbery, but that he had nothing to do with the intentional killing of Mr. Mayfield or, you may find that Mr. Mayfield was not intentionally killed by anyone, then you could not find the Defendant guilty of capital murder but you must find him guilty of murder.

(R. 626-629) (emphasis added)

The trial judge also referred to these fundamental principles in discussing the possible verdict forms with the jury. As to the verdict form finding the petitioner guilty of the capital offense, the trial judge told the jury:

> that is if you are convinced beyond a reasonable doubt that a robbery did take place and that Mr. Mayfield was intentionally killed then you would find from the evidence that a capital offense did in fact take place and then you look to the evidence to determine the guilt or not guilty of this Defendant, Chastaine Raines; did he commit the robbery either himself or aided or assisted another in committing the robbery and did he aid or assist another's specific intent to kill, that is the specific intent to kill Mr. Mayfield. <u>If you believe that this Defendant aided or assisted or helped or performed any of the acts comprising the robbery and he aided or assisted or abetted, conspired with another either on</u>

> prearrangement or on the spur of the moment to intentionally kill Mr. Mayfield, then the form of your verdict would be, "We, the jury, find the Defendant guilty of the capital offense as charged in the indictment." The question of punishment at this phase is not for your consideration and should not be discussed among the jury at this phase.

(R. 630-631) (emphasis added)

As to the verdict form finding the petitioner guilty of the lesser included offense of non-capital murder, the trial judge told the jury:

> If after a full and fair consideration of all of the evidence in this case you are convinced beyond a reasonable doubt that this Defendant, Chastaine Raines, conspired or helped or aided or assisted another in the commission of a robbery, as I have already defined that term, but did not aid or assist in intentionally killing Mr. Mayfield, or Mr. Mayfield was not intentionally killed by anyone, but that Mr. Mayfield is dead as a result of this robbery and this Defendant participated, either aided or assisted in that robbery as I have defined that or committed the robbery himself, but did not aid or assist in the intentional killing of Mr. Mayfield, then the form of your verdict would be, "We, the jury, find the Defendant guilty of murder as charged in the indictment." ...

(R. 631-632) (emphasis added) Both sides announced their satisfaction with the oral charge. (R. 634)

The trial judge had in the course of his oral charge invited the jury to come back from its deliberation and ask him any questions about the law that they would like to be re-instructed on. (R. 609-610) During its deliberations, the jury did return to the courtroom to ask questions about the applicable law. (R. 636-643) Included in these queries were questions about the intentional killing requirement and the aiding and abetting doctrine. (R. 638-643) The trial judge took great pains to answer the jury's questions in detail. (R. 638-643) In doing so, he emphasized to the jury that in order to find the petitioner guilty of the capital offense the jury would have to be convinced beyond a

reasonable doubt that he aided and abetted the intentional killing itself instead of just the robbery. (R. 640-642)

In summary, the trial judge's oral charge to the jury correctly explained the applicable law concerning the intent to kill requirement and the aiding and abetting doctrine as it relates to a non-triggerman capital defendant. Moreover, when the jury returned from its deliberations for further instruction, the trial judge explained that applicable law again and emphasized to the jury that it could convict the petitioner of the capital offense only if it found beyond a reasonable doubt that he aided and abetted the intentional killing itself as well as the robbery.

The sufficiency of the evidence prong of the two-part intent to kill test was also correctly applied in this case. The State's evidence showed that seconds before petitioner's co-defendant murdered the victim in this case petitioner himself, who was armed, threatened to kill a security guard if he did not lay down as ordered. (R. 425, 470-474) Therefore, petitioner actually expressed his own intent to kill anyone who did not get down as ordered, which is exactly why the victim was in fact murdered by petitioner's co-defendant. (R. 343-344). Petitioner's own words uttered seconds before the murder establish abundant evidentiary basis for the finding of intent to kill that is implicit in the jury verdict. As the Alabama Supreme Court held:

> Pulling the trigger is only one factor in determining intent to kill. Ritter v. State, 375 So. 2d 270, 274-275 (Ala. 1979). From the testimony concerning the defendant's words and actions during the course of the robbery, the jury had sufficient evidence from which to infer that the defendant was prepared to kill, intended to kill, and supported Watkins in his killing of Mr. Mayfield and, thus, that the defendant was an accomplice to the intentional killing of Mr. Mayfield.

Chastine Lee Raines v. State, No. 81-746 (Ala. Dec. 30, 1982), Ms. op. at 4.

Given the facts of this case and the law applied by the Alabama Supreme Court the only issue presented concerning petitioner's non-triggerman status is whether the Constitution forbids imposing a sentence of death on a non-triggerman accomplice to the intentional killing itself when he was prepared to kill, intended to kill, and supported the killing. That is not a substantial question which merits this Court's review. See, Enmund v. Florida, 102 S. Ct. 3368, 3383 n. 20 (1982) (dissenting opinion of O'Connor, J., joined by Burger, C.J., Powell and Rehnquist, J.J.); Lockett v. Ohio, 438 U.S. 586, 627-628 (1978) (opinion of White, J., concurring in part and dissenting in part).

II. THE VICTIM STATUS ISSUE IS PURELY ONE OF STATE LAW

As a matter of Alabama statutory law, the robbery-intentional killing capital offense requires that the person killed be a victim of the underlying robbery. Code of Alabama 1975, §13A-5-31(a)(2) ("Robbery or attempts thereof when the victim is intentionally killed..."). The person killed in this case, Milton Mayfield, was an employee of the store that was robbed. Chastine Lee Raines v. State, No. 6 Div. 688 (Ala. Cr. App. April 20, 1982), Ms. op. at 2, 4-6. The Alabama Court of Criminal Appeals, relying heavily on an eight-year-old Alabama robbery decision, held that Milton Mayfield was a robbery victim within the meaning of the Alabama capital punishment statute. Id., at 3-6. After reviewing the record and opinion of the lower appellate court, the Alabama Supreme Court found that the Court of Criminal Appeals had correctly applied Alabama law on this issue; adopted that section of the Court of Criminal Appeals opinion; and held as a matter of Alabama law that Milton Mayfield was a victim of the robbery within the meaning of

the Alabama statute. Chastine Lee Raines v. State, No. 81-746 (Ala. Cr. App. Dec. 30, 1982), Ms. op. at 4-5.

Petitioner's contention that the Alabama Supreme Court misapplied Alabama law in holding that Milton Mayfield was a robbery victim within the meaning of the statute is nothing more than a state law issue. State supreme courts are the final arbiters of state law, and it is not this Court's function to review their decisions of state law questions. E.g., Missouri v. Hunter, 51 U.S.L.W. 4093, 4096 (Jan. 19, 1983); O'Brien v. Skinner, 414 U.S. 524, 531 (1974); Garner v. Louisiana, 368 U.S. 137, 169 (1961); see, e.g., 28 U.S.C. §1257(c); Supreme Court Rule 17.1(b) and (c).

III. THIS CASE IS NOT A GOOD VEHICLE TO USE TO RECONSIDER UNITED STATES v. AGURS, 427 U.S. 97 (1976)

Before the Alabama Court of Criminal Appeals, petitioner complained about the delayed disclosure of some lineup sheet information which neither the prosecutor nor defense counsel learned about until during the trial. (R. 766) The Court of Criminal Appeals extrapolated the test for non-disclosed evidence announced in United States v. Agurs, 427 U.S. 97 (1976), and held that petitioner was not entitled to a new trial because earlier disclosure of the lineup sheet information would not have resulted in creation of a reasonable doubt where one did not otherwise exist. Chastine Lee Raines v. State, No. 6 Div. 688 (Ala. Cr. App. April 20, 1982), Ms. op. at 6-7.

The Alabama Supreme Court affirmed that reasoning and held:

> The information was put before the jury and, in the words of the trial court, "dealt a jolt" to the state. The information was subject to a "thorough and sifting cross examination," as the Court of Criminal Appeals held. The information was exploited as fully as it

could have been, in contrast to the total suppression of exculpatory evidence found in Brady v. Maryland, 373 U.S. 83 (1963).

> Even in the case of total nondisclosure, the information must create a reasonable doubt where one did not otherwise exist. United States v. Agurs, 427 U.S. 97 (1976). The defendant's burden is to show that reasonable doubt "not as a matter of speculation, but as a demonstrable reality." Beck v. Washington, 369 U.S. 541, 558 (1962). We agree with the Court of Criminal Appeals that the appellant has failed to show how he was actually harmed by the delayed disclosure of the information. Appellant's argument that the information would have enabled more effective preparation for trial was rejected in United States v. Agurs, supra, at 112 n. 20, on the grounds that an argument could always be made that knowledge of the prosecutor's case, both incriminating and exculpatory, would help defense counsel in preparation of the case for the defense. Therefore, the proper focus is upon the materiality in the nondisclosure or delayed disclosure of exculpatory information in determining the denial vel non of defendant's rights of due process and fair trial -- a showing not made by this defendant.

Chastine Lee Raines v. State, No. 81-746 (Ala. Dec. 30, 1982), Ms. op. at 5-6.

Petitioner apparently concedes that the Agurs test for non-disclosed exculpatory evidence was correctly applied in this case, because on pp. 17-18 of the petition he asks this Court to use this case as a vehicle for re-considering that test. This case is not a good vehicle for such use because this case, unlike Agurs, involves delayed disclosure of exculpatory evidence. The significance of that difference is indicated by the fact some courts have held that since there is no constitutional requirement that exculpatory evidence be disclosed prior to trial, disclosure of such evidence at trial is not even governed by the Agurs test. E.g., United States v. Allain, 671 F. 2d 248, 255 (7th Cir. 1982); United States v. Ellsworth, 647 F. 2d 957, 961 (9th Cir. 1981).

If this Court chooses to reconsider its Agurs holding concerning the test for determining when a new trial is

required because of non-disclosed exculpatory evidence, it should do so in a case involving non-disclosed evidence because only such a case presents that issue. This is not such a case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Edward E. Carnes, a member of the Bar of the Supreme Court of the United States, do hereby certify that I did serve a copy of this brief on petitioner by placing a copy in the United States mail, postage prepaid, and properly addressed to his counsel of record as follows:

Hon. James G. Stevens
P. O. Box 20634
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I further certify that I have served all parties required to be served.

Done this 23rd day of March, 1983.

Edward E. Carnes

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